

# Standard Terms and Conditions

(Master Agreement)



## Pentana Solutions Limited

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Company No. 07158959

VAT No. 992 7096 70

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**Master Licence Agreement**

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**Parties**

1. **Pentana Solutions Limited** Company No. 07158959 of Gardiners Barn, The Courtyard Barns, Choke Lane, Cookham Dean, Maidenhead, Berkshire, SL6PT, UK represented herein by its Company Secretary (**Pentana Solutions**)

2. **Customer:**

**Customer's Company Name**.....  
**Customer's Company Number**.....  
**Address (Principal Place of Business)**.....  
.....  
.....  
.....

and;

**Address (Registered Office)** .....  
.....  
.....  
.....

**Introduction**

- A. The Customer wishes to use the products, services and systems of Pentana Solutions (the Licensed System).
- B. Pentana Solutions has offered to grant the Customer a non-transferable and non-exclusive licence to use the Licensed System, subject to the terms and conditions set out below.
- C. The Customer requires ongoing supply of products, services and access to systems from Pentana Solutions in respect of the Licensed System and simultaneously enters into a Service Level Agreement (**SLA**) with Pentana Solutions to govern the supply of products, support services and access for the Licensed System.

**Operative clauses**

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**1. Definitions**

1.1 In this Agreement, unless the contrary intention appears:

**Agreement** means:

- a) This agreement and the SLAs which are attached to this agreement as an Appendix;
- b) Any individual agreement entered into between the Parties referring to and incorporating the general terms of business and specific terms of business.

**API** means Application Programming Interfaces;

**Base Product** means a Pentana product provided by Pentana in quantities of one or more, in the standard, off-the-shelf form of such modules, as they exist prior to the development of, or any modifications to, the Base Product including the integration of Pentana into accounting software, POS software and other ERP solutions;

**Commencement Date** means the date the Customer signs the execution clause at the back of this Agreement;

**Confidential Information** means the confidential information of a Party which relates to the subject matter of this Agreement and includes information relating to:

- (a) the Licensed System, Base Product or Result;
- (b) the personnel, policies or business strategies of Pentana Solutions;
- (c) the terms upon which the Licensed System is being supplied, serviced and supported pursuant to this Agreement;
- (d) the Customer Data and Customer Technology (which are Confidential Information of Customer);
- (e) Any other information of a party that is disclosed in writing or orally and is designated as *Confidential* or *Proprietary* at the time of disclosure (and, in the case of oral disclosures, summarised in writing within thirty (30) days of the initial disclosure and delivered to the receiving party), or that due to the nature of the information the receiving party would clearly understand it to be confidential information of the disclosing party; and
- (f) the specific terms and conditions of this Agreement, any Order Form, any SOW, and any amendment and attachment thereof, between the parties;

**Contractor** means an approved Pentana Solutions representative (and not an employee) who is a person or a company performing work, on behalf of Pentana Solutions and/or the customer, that has a responsibility to provide services in line with agreed to expectations, as per the order form;

**Customer Affiliates** means any legal entity controlling, controlled by or under common control through the possession of a majority of the shares or votes in the Customer;

**Customer Application** means the Customer's own proprietary software sold directly to its clients. The Application may not be an API, a software development kit or a function licensed to third parties with which to build functionality that utilises Pentana's technology;

**Customer Data** means any electronic data uploaded by or for the Customer and the Customer's agents, employees and contractors, and processed in the Subscription Service, excluding Pentana's Core Technology;

**Customer Technology** means software, methodologies, templates, business processes, documentation or other material authored, invented or otherwise created or licensed (other than by or from Pentana) by the Customer using or for use with the Subscription Service, excluding the Pentana Core Technology;

**Defect** means a failure of the Base Product used by the Customer to conform to the specifications published at any given time by Pentana Solutions that is reproducible by both the Customer and Pentana Solutions or, if applicable, a failure of a Modification to conform to specifications prepared by Pentana Solutions and approved by the Customer;

**Designated Equipment** means any equipment, virtual or physical designated in the SLA, upon which the Licensed System, Base Product, API or SaaS may be used;

**Documentation** means operating manuals and other printed materials which assist the Customer to use the Licensed System, Base Product, API or SaaS services including any Development Tools, technical programs, interface documentation and user software material as published by Pentana Solutions;

**Enterprise License Fee** means a Licence fee for use of the SaaS service;

**Enterprise Subscription** means Pentana Solutions SaaS Service used on a recurring basis by a Customer and/or a client/s of the Customer on an occasional basis. The Customer will also have multiple users of Pentana Solutions SaaS Service in its organisation accessing the SaaS Service from different devices;

**ERP** means Enterprise Resource Planning;

**Escalation Request** is as set out in the SLA;

**Extra Charge** means a charge in accordance with Pentana Solutions' standard rates on a time and materials basis plus Travel Expenses, in cases where additional products or services have been requested over and above those specified in the SLA;

**Force Majeure** means a circumstance beyond the reasonable control of the Parties that results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include, but are not limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes;

**GMT** means Greenwich Mean Time;

**GToB** means the General Terms of Business as incorporated in this document;

**Hardware Product** means the hardware equipment specified in a Hardware Agreement;

**Intellectual Property Rights** means copyright, database right, trademarks, registered and unregistered designs, rights in inventions, patents, confidential information, trade secrets or know-how;

**Licence Fee** means the fee specified in the SLA, payable by the Customer to Pentana Solutions, for the use of the Licensed System, Base Product, API, SaaS or Result;

**Licensed System** means the products and/or services and/or systems designated in the SLA;

**Modifications** means the modifications of the Base Product performed by Pentana or a sub-contractor engaged by Pentana;

**Normal Business Hours** means between 0900am and 1700pm GMT (United Kingdom Time Zone) on any day except Saturday, Sunday or any public holiday in the United Kingdom;

**Order Form** means a written ordering document signed by the Customer and Pentana Solutions;

**Party** means either Pentana Solutions or the Customer as the context dictates and includes parties;

**Pentana** means The Pentana Solutions Company;

**Pentana Affiliates** means any legal entity controlling, controlled by or under common control through the possession of a majority of the shares or votes in Pentana Solutions;

**Pentana Core Technology** means:

- (a) the Licensed System, Software, Development Tools, Documentation, and Pentana technology and methodologies (including, without limitation, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation) existing as of the Effective Date or otherwise arising outside of work under a Professional Service;
- (b) updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals; and
- (c) Intellectual property anywhere in the world relating to the foregoing;

**Pentana Country** means the country where Pentana has its registered domicile;

**Pentana Products** means Base Pentana Products, to which the intellectual property rights are vested in Pentana Solutions and which are defined by Pentana Solutions as being standard products;

**Per Device Subscription** means Pentana Solutions' SaaS Service used on a recurring basis by the Customer and/or a client of the Customer on a frequent basis on a single device such as a mobile device or a tablet device or a PC;

**Personal Data** has the same meaning as in the Privacy Act;

**POS** means Point of Sale;

**Privacy Act** means the Data Protection Act 1998 together with the EU Data Protection Directive 95/46/EC and any other laws, codes or principles and any amendments thereto that deal with privacy or the collection, use and disclosure of Personal Information.

**Privacy Notice** means the notice required under the Privacy Act.

**Privacy Policy** means the privacy policy used by Pentana Solutions as amended from time to time and includes any privacy policies and privacy compliance programs developed by Pentana Solutions as notified in writing by Pentana Solutions from time to time.

**Privacy Officer** means the person within the Customer and/or Pentana Solutions (as applicable) who is responsible for privacy related matters.

**Product / Products** means Base Products including Modifications and Third Party Products delivered under and specified in the Agreements.

**Result means** the result of the Services performed by Pentana.

**SaaS Service** means the API which will be used in conjunction with the Customer's proprietary Application to process scanned images;

**SaaS Subscription Fee** means a fee for use of the SaaS service;

**Services** means the services provided by Pentana Solutions to the Customer pursuant to the SLA including but not limited to Maintenance Services and Professional Services delivered by Pentana under and specified in the Agreements;

**Service Fees** means the charges specified in the SLA, which are payable by the Customer to Pentana Solutions in respect of the Services;

**Service Level Agreement** means a written or unwritten contract, arrangement or understanding entered into between the parties for specific products, services and systems provided by Pentana Solutions to the Customer and is also referred to as an SLA; and

- (a) in cases where the SLA is an unwritten contract, arrangement or understanding between Pentana Solutions and the Customer, this SLA will continue in force until superseded by a written contract between Pentana Solutions and the Customer;
- (b) in cases where the SLA is a written contract, the SLA will be copied and form an Appendix to this Agreement;
- (c) in cases where an SLA concerns a different Licensed System or Services provided by Pentana Solutions to the Customer, each SLA will be appended and form a part of this Agreement and each SLA is to be read together with the Master Agreement as the entire agreement pursuant to clause 26, concerning that subject matter; and
- (d) in cases where an SLA is an update of a previously written SLA for the same or substantially similar Licensed System or Services between Pentana Solutions and the Customer, the most up to date SLA is the entire agreement along with the Master Agreement pursuant to clause 26 confirming that subject matter;

**Site** means the location designated in the SLA for delivery, installation and performance of the Licensed System, Base Product, API, SaaS or Services, or the Principal Place of Business;

**Software** means software provided by Pentana Solutions to the Customer that operates on the Customer-provided machines or approved environment and/or network solely to facilitate the use of the Licensed System;

**SOW** means a statement of work for Professional Services;

**SToB** means Specific Terms of Business stipulating the specific terms for the delivery of any Product or Service provided by Pentana Solutions;

**Sub-contractor** means a person or business which has a contract (as an "independent contractor" and not an employee) with a contractor to provide some portion of the work or services on a project which the contractor has agreed to perform.

**Subscription Service** means the Pentana Solutions software as a service (SaaS) offering ordered by Customer under an Order Form;

**Subscription Term** means the term of authorised use of the Subscription Service as set forth in the Order Form;

**Third Party** means an entity other than the Parties and Pentana Affiliates and Pentana Solutions. Where Pentana Solutions or a Pentana Affiliate assigns a sub-contractor for the performance of Services, such party will be regarded a sub-contractor and shall not be regarded as a Third Party;

**Third Party Products** means software or hardware owned by Third Parties or made available to Pentana Solutions and/or the Customer by Third Parties, and provided to the Customer by Pentana Solutions under an Agreement;

**Trade Marks** means the registered and/or unregistered trade marks owned and/or used by Pentana Solutions;

**Transaction** means the generation or creation of an invoice, receipt or any other Customer generated document uploaded into the Licence system;

**Transactional service** means a service that is calculated on a per transaction basis;

**Travel Expenses** means any out of pocket expenses reasonably incurred including travel, accommodation, meals, tolls and visas;

**User** means a person using the Base Product by logging in as a user profile in the Base Product;

**VAT** means value added tax imposed in any member state of the European Union pursuant to Council Directive (EC) No 2006/112 on the common system of value added tax and national legislation implementing that Directive or any predecessor to it, or supplemental to that Directive, or any similar tax which may be substituted for or levied in addition to it, or any value added, sales, turnover or similar tax imposed in any country that is not a member of the European Union;

**Version** means a substantial enhancement which Pentana Solutions, at its own choice, elects to make to a Base Product. A Version may include new features, functional improvements, or elements of functionality not previously included in the Base Product. Version numbers are identified by a change in the figure to the left of the decimal point (e.g. from 3.66 to 4.0);

**Virtual environment** means a computer-generated, three-dimensional representation of a setting in which the user of the technology perceives themselves to be and within which interaction takes place; also called virtual landscape, virtual space, virtual world or cloud. This environment includes the Microsoft Azure platform and any other Pentana Solutions approved platforms required to deliver the benefit to the customer;

**Warranty Period** is the period specified in the SLA.

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## 2. Interpretation

2.1 In this Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference, provided for the purpose of convenience only and are not relevant to the construction or interpretation of any of their respective provisions;
- (b) a reference to a clause number is a reference to its subclauses;
- (c) words in the singular number include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (f) a reference to a clause is a reference to a clause or subclause;
- (g) a reference to a subclause is a reference to a subclause within the clause in which that reference is made;
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) a reference to a Appendix includes a reference to any part of that Appendix which is incorporated by reference;
- (j) the recitals to this Agreement do not form part of the Agreement;
- (k) monetary references are references to the lawful currency for the time being of the United Kingdom.



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### **3. Access, Assistance and Performance**

- 3.1 Pentana Solutions will use its best endeavours to deliver the Licensed System to the Customer, and where relevant install the Licensed System and perform the Services, in accordance with the timeframe specified in the SLA.
- 3.2 The Customer must, where relevant, ensure Pentana Solutions and its support personnel have full and safe access including security clearances, physical and/or electronic as appropriate, to the Licensed System and the relevant equipment at all reasonable times for the purpose of providing the Services and complying with subclause 3.1. The Customer must also ensure that Pentana Solutions and its support personnel are provided with all information, facilities, assistance and accessories reasonably required by Pentana Solutions to enable Pentana Solutions to comply with its obligations under this Agreement.
- 3.3 The Customer must give Pentana Solutions such reasonable assistance, including the provision of personnel and facilities, as Pentana Solutions considers necessary to ensure satisfactory delivery, installation and performance of the Licensed System. If reasonably requested by Pentana Solutions, the Customer must provide a suitably qualified or informed representative to accompany Pentana Solutions' personnel and to provide such advice or assistance to those personnel as may be necessary in order to enable Pentana Solutions to access the Licensed System and any Designated Equipment or other equipment and to otherwise effectively perform the Services.
- 3.4 If, in the opinion of Pentana Solutions, the costs associated with the delivery, installation and performance of the Licensed System are greater than Pentana Solutions could have reasonably contemplated on execution of this Agreement and are greater than the costs that would normally be associated with a similar installation project, Pentana Solutions may make an Extra Charge.

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### **4. Grant of Licence**

- 4.1 Pentana Solutions hereby grants to the Customer a non-exclusive, non-transferable licence for the Licence Fee.
- 4.2 Subject to the terms of this Agreement, Pentana Solutions authorises the Customer to access and use the purchased Subscription Service during the Subscription Term as set forth in an applicable Order Form for its business purposes in accordance with the Documentation. The Customer shall not use or otherwise access the Subscription Service in a manner that exceeds the Customer's authorised use as set forth in this Agreement and the applicable Order Form.
- 4.3 Pentana Solutions grants the Customer a limited, personal, worldwide, non-sublicensable, non-transferable (except as set forth in Section 28), non-exclusive license during the Subscription Term to install and execute Software on machines operated by or for the Customer solely to facilitate the Customer's authorised access to and use of the purchased Subscription Service. The Software may include code that is licensed under third party license agreements, including open source made available or provided with the Software. Software is licensed and not sold even if for convenience Pentana Solutions makes reference to words such as *sale* or *purchase*.
- 4.4 In support of the Customer's internal business use of the Subscription Service during the Subscription Term, Pentana Solutions grants to the Customer a limited, personal, worldwide, non-sublicensable, non-transferable (except as set forth in Section 28), non-exclusive license to download and make a reasonable number of copies of the Development Tools, and to use, copy, modify and create derivative works of the Development Tools, in:
- (a) using, implementing and integrating the Pentana Solutions applications with other software and systems; and
  - (b) creating applications on the Pentana Solutions platform (to the extent the Customer has purchased authorised use of the Subscription Service to create applications on the Pentana Solutions platform). The Customer shall not use the Development Tools in a manner that causes it to exceed the limits of its authorised use of the Subscription Service as set forth in this Agreement and the Order Form. From time to time, Pentana Solutions may provide Development Tools subject to the terms and conditions of separate agreements which will be provided to the Customer for review and to which the Customer will be required to agree prior to use of such Development Tools; provided that Pentana Solutions shall not require the Customer to agree to separate terms and conditions for any Development Tool that is necessary for the Customer's use of its ordered Subscription Service in conformance with the Product Overview unless set forth on the Order Form.
- 4.5 The Customer shall not (and shall not permit others to) do the following with respect to the Pentana Core Technology: (i) use the Subscription Service with external programs in a manner that intentionally circumvents contractual usage restrictions; (ii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or time share or otherwise make any of it available for access by third parties except as otherwise expressly provided in an Order Form; (iii) access it for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Subscription Service; (iv) disassemble, reverse engineer or decompile it; except to the extent permitted by law, (v) copy, adapt, translate, create derivative works based on or otherwise modify it except as permitted in this Agreement; (vi) remove or modify a copyright or other proprietary rights or restricted use notice in it; (vii) use it to reproduce, distribute, display, transmit or use material protected by copyright or other

intellectual property right (including moral rights, any rights of publicity or privacy or confidentiality) without first obtaining the permission of the owner; (viii) use it to create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation; or (ix) access or disable any Pentana or third party data, software or network (other than the Customer's instance of the Subscription Service in accordance with this Agreement). Before the Customer exercises any of the foregoing actions that the Customer believes it is entitled to, the Customer shall provide Pentana with thirty (30) days' prior written notice and provide reasonably requested information to allow Pentana to assess the Customer's claim and, at Pentana Solutions' sole discretion, provide alternatives that reduce adverse impacts on Pentana Solutions' intellectual property and other rights.

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## 5. Documentation

- 5.1 The Documentation is licensed to the Customer for the duration of the Agreement.
- 5.2 Pentana Solutions must provide the Customer with such number of copies of the Documentation as the SLA specifies.
- 5.3 The Customer acknowledges that the Documentation contains sufficient information for the adequate use of the Licensed System, except to the extent Pentana Solutions has notified the Customer of any omission or deficiency, or of any variation which it considers necessary for the proper use of the Licensed System.
- 5.4 The Customer shall not copy or reproduce the Documentation except to the extent otherwise authorised by this Agreement.

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## 6. Licence Conditions

- 6.1 The Customer may only use the Licensed System as advised and notified by Pentana Solutions.
- 6.2 The Licensed System may only be used pursuant to this Agreement:
  - (a) by the Customer; and
  - (b) at the Site; and
  - (c) only in conjunction with the Application;
  - (d) in the case of software, to make one copy for back-up purposes pursuant to clause 7.2;
  - (e) if the number of Customers, or the number of Sites increases, or if the size, description or location of the Site changes in the case of software or support, only after paying an additional Licence Fee, and only with the consent of Pentana Solutions;
  - (f) in the case of services, or access to systems, only after paying an Extra Charge.
- 6.3 Pentana Solutions shall determine whether the Customer will use the SaaS Service on a Per Device Subscription basis, on an Enterprise Subscription basis, or on a Transactional basis (or all), as appropriate for the Customer's business.
  - (a) Per Device Subscription basis.

In consideration of payment in full of the monthly SaaS subscription fee for use of the SaaS Service, and subject to all the terms and conditions hereof, Pentana Solutions hereby grants to the Customer's clients a right to access and use the SaaS Service only from Customer's Application on a single device during the corresponding subscription period, as well as related materials such as documentation to the extent then available, all made available to Customer in conjunction with and under the terms and conditions of this Agreement.

- (b) Enterprise Subscription Basis.

In consideration of payment in full of the enterprise license fee for use of the SaaS Service, and subject to all the terms and conditions hereof, Pentana Solutions hereby grants to the Customer's clients a right to access and use the SaaS Service only from Customer's Application on any of the client's devices during the term of this Agreement, as well as related materials such as documentation to the extent then available, all made available to Customer in conjunction with and under the terms and conditions of this Agreement.

- (c) Transactional Basis.

In consideration of settling the transactions incurred in full within the trading terms agreed to for use of the SaaS and subject to all the terms and conditions hereof, Pentana Solutions hereby grants to the Customer's clients a right to access and use the SaaS Service only from the Customer's Application on a single device during the corresponding subscription period, as well as related materials such as documentation to the extent then available, all made available to the Customer in conjunction with and under the terms and conditions of this Agreement.

- (d) The type of access used by the Customer is specified in the SLA which is attached hereto and made an integral part hereof. A license key will be issued to the Customer either per device using the Customer's Application or a universal key for all Enterprise subscription users of the Customer's Application.
- (e) Pentana Solutions shall provide access to its SaaS service, documentation, sample programs, programming libraries, and other files that are intended to assist the Customer with linking the Customer's Application to the SaaS Service. This SaaS Service is licensed to the Customer to be used solely and exclusively with the Application only and may not be transferred to any third party without the prior written consent of Pentana Solutions. In no event may the Customer transfer, assign, rent, lease, sell or otherwise dispose of the SaaS service on a temporary or permanent basis except as expressly provided herein.
- (f) Pentana Solutions hereby grants the Customer a non-transferable, nonexclusive, terminable, world-wide right to use, sublicense and distribute with the Customer's Application a proprietary interface developed by Pentana consisting of a series of commands that will enable the Customer's Application to connect to the SaaS Service for processing and the return of data to the device via the same proprietary interface (the "**Application Program Interface**" or "**API**"). The Customer is required to provide its clients that may use the SaaS Service with a software license that contains terms of use at least as restrictive as the terms contained herein and Pentana Solutions shall be entitled to hold the Customer responsible for the enforcement of the terms of the software license by its clients.
- (g) Pentana Solutions may remotely review the Customer's use of the Subscription Service, and upon Pentana Solutions' written request the Customer shall provide any reasonable assistance, to verify the Customer's compliance with the Agreement. If Pentana Solutions determines that the Customer has exceeded its permitted use of the Subscription Service then Pentana Solutions will notify the Customer and within thirty (30) days thereafter the Customer shall either: (i) disable any unpermitted use or (ii) purchase additional subscriptions commensurate with the Customer's actual use.

6.4 Unless specified to the contrary in the SLA, the Licensed System may not be used on equipment other than Designated Equipment save that at the sole risk of the Customer it may be used on alternative equipment if:

- (a) the Designated Equipment is temporarily inoperable due to malfunction, maintenance or change of installation site; or
- (b) Pentana Solutions has otherwise given its consent in writing to such alternate use.

6.5 The Customer must not copy, alter, modify, reproduce, disassemble, decompile, reverse engineer or create derivative works based on the Licensed System except to the extent authorised by this Agreement or as expressly authorised under Chapter III of the Copyright, Designs and Patents Act 1988 as amended.

6.6 The Customer must not allow use of, or data extracted from, the Licensed System by any 3<sup>rd</sup> party except with written consent from Pentana Solutions.

6.7 Pentana Solutions reserves the right to collect and utilise data from the Licensed System for the purposes of aggregated analysis and reporting and guarantee anonymity of the source.

6.8 In addition to any other remedies available to Pentana Solutions under this Agreement or otherwise, any unauthorised use, alteration, modification, disassembly, decompilation, reverse engineering, reproduction, publication, disclosure or transfer of the Licensed System, or the creation of any derivative works based on the Licensed System, will entitle Pentana Solutions to apply to any competent court for any available equitable remedy against the Customer.

6.9 The Customer acknowledges that there is no transfer of title or ownership to the Customer of the Licensed System or the Documentation or any modifications, updates or new releases of the Licensed System.

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## **7. Copying of Software**

- 7.1 Subject to subclause 7.2, the Customer must not copy or reproduce the software in the Licensed System or the Documentation supporting the software by any means or in any form without Pentana Solutions' prior written consent.
- 7.2 The Customer may make one copy of the software in the Licensed System for the purpose of backup and security. The Customer acknowledges this copy as the property of Pentana Solutions. The terms of this Agreement, with the necessary modifications, apply to this copy.
- 7.3 The Customer must ensure any copy of the software in the Licensed System made pursuant to this Agreement bears notice of Pentana Solutions' ownership of copyright and a notice stipulating that the Licensed System contains information confidential to Pentana Solutions. The Customer must comply with any directions of Pentana Solutions as to the form or content of such notices.
- 7.4 If requested by Pentana Solutions, the Customer must issue a notice in a form approved by Pentana Solutions to all employees and other authorised users of the software in the Licensed System under its direction or control, advising such persons of the Customer's obligations under this clause and also advising of the possible civil and criminal consequences of a breach of this clause.

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## **8. Modification of Software**

- 8.1 The Customer must not modify or alter the software in the Licensed System or merge all or any part of the Licensed System with any other software without Pentana Solutions' written permission.
- 8.2 If the software in the Licensed System is modified or altered by the Customer with the permission of Pentana Solutions pursuant to subclause 8.1:
- (a) the costs associated with the modifications or alterations or the costs arising out of the investigation of the effects of proposed modifications or alterations will be borne solely by the Customer; and
  - (b) the Customer will fully indemnify against all liability which may be incurred by Pentana Solutions if such modifications or alterations infringe any Intellectual Property Rights of a third person or otherwise cause Pentana Solutions to suffer loss, damages or expense.
- 8.3 The Licensed System, Base Product, API or SaaS as modified or altered remains the property of Pentana Solutions in all respects, whether modified by the Customer, Pentana Solutions or a third party and whether or not authorised pursuant to this Agreement. Specifically, the Customer must if necessary assign to Pentana Solutions all Intellectual Property Rights arising out of any modifications to the Licensed System and deliver to Pentana Solutions, in a format specified by Pentana Solutions, a copy of all source code associated with such modifications or alterations.
- 8.4 This Agreement applies to the Licensed System as modified or altered.
- 8.5 The Licensee must execute (and procure the execution by any relevant third party of) such documents and perform such other acts as are necessary in order to give effect to subclause 8.3.
- 8.6 Pentana Solutions is not required to provide support services in respect of Licensed System which has been modified by the Customer, but may at its sole discretion elect to do so for an Extra Charge.

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## **9. Third Party Products**

- 9.1 In the event that Third Party Products are included in any delivery of Products or any performance of Services carried out under any Agreement, the terms applied by the Third Party apply instead of the terms of the Agreement for such Third Party Products, including the terms for the Customer's right to use the Third Party Product. Any claims for redress presented by the Customer due, among other things, to intellectual property infringements, defects, delays, damages or any other consequences arising from the use or implementation of the Third Party Product is the responsibility of such Third Party Product provider and not Pentana Solutions and shall, as such be governed by such Third Party terms and not this Agreement. Pentana Solutions shall in no event and in no respect be liable for defects, delays or damages, whether direct, indirect or consequential caused by Third Party Products.
- 9.2 Pentana Solutions shall, however, take reasonable action to influence such Third Party to take action to rectify defects in Third Party Products. Further, Pentana Solutions undertakes to forward inquiries and complaints to the Third Party in question.

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**10. Reverse Engineering**

The Customer must not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the software or any products supplied as a part of the Licensed System. The Customer's rights under Chapter III of the Copyright, Designs and Patents Act 1988 as amended are reserved.

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**11. Security of the Licensed System**

- 11.1 The Customer is solely responsible for the use, supervision, management and control of the Licensed System at the Site.
- 11.2 The Customer must ensure that the Licensed System is protected at all times from misuse, damage, destruction or any form of unauthorised use at the Site.
- 11.3 The Customer must keep accurate records of use, copying, any modification permitted pursuant to clause 8.1 and disclosure of the Licensed System. The Customer permits Pentana Solutions to inspect such records at any time during the Customer's normal business hours. If Pentana Solutions requests, the Customer must furnish to Pentana Solutions a copy of all or any part of such records.

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**12. Nature of Services**

- 12.1 Pentana Solutions must perform such services as it considers reasonable to ensure the Licensed System remains in substantial conformity with the SLA. Such support will, at the sole option of Pentana Solutions, take the form of:
- (a) telephone advice;
  - (b) remote connection to customer site;
  - (c) on-site attendance followed by such advice, programming or re-configuration as Pentana Solutions considers necessary; and
  - (d) such services as Pentana Solutions considers are more effectively provided off-site.
- 12.2 Pentana Solutions must provide the Services in response to a report by the Customer of a suspected defect or error in the Licensed System, which defect or error allegedly causes the Licensed System to deviate from the Licensed System's normal operating conditions.

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**13. Services Availability**

- 13.1 Pentana Solutions must provide the Services between 0900 hours and 1700 hours GMT, Monday to Friday.
- 13.2 If the Customer requests Pentana Solutions to provide on-site support, Pentana Solutions will do so as soon as reasonably practicable and an Extra Charge will apply.
- 13.3 Pentana Solutions does not warrant that it will be capable of promptly receiving, processing or otherwise acting upon a request for support which is made outside Pentana Solutions' Normal Business Hours or that it can provide on-site Services outside Pentana Solutions' Normal Business Hours.
- 13.4 Immediately after making a request for Services which may involve error correction or program modification, the Customer must provide to Pentana Solutions a documented example of the defect or error which it alleges prevents conformity of the Licensed System's normal operating conditions.
- 13.5 The Customer must, if so requested by Pentana Solutions, give Pentana Solutions a listing of output and any other data which Pentana Solutions requires in order to reproduce operating conditions similar to those present when any alleged defect or error in the Licensed System was discovered.

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**14. Exclusions**

- 14.1 Services to be provided by Pentana Solutions under this Agreement do not include:
- (a) correction of errors or defects caused by operation of the Licensed System in a manner other than that currently recommended by Pentana Solutions in its Documentation;

- (b) correction of errors or defects caused by modification, revision, variation, translation or alteration of the Licensed System not authorised by Pentana Solutions;
- (c) correction of errors or defects caused by the use of the Licensed System by a person not authorised by Pentana Solutions or the Customer;
- (d) correction of errors or defects caused by customer error, fault, negligence or abuse;
- (e) correction of errors or defects caused by causes external to the Licensed System or Designated Equipment, such as, but not limited to, transportation or the fluctuation of power;
- (f) correction of errors or defects caused by transportation of the Licensed System or Designated Equipment by personnel other than from Pentana Solutions;
- (g) correction of errors caused in whole or in part by the use of software other than the Licensed System;
- (h) correction of errors caused by entities other than Pentana Solutions including third party internet service providers, networks or operating environments;
- (i) correction of errors caused, by the failure of the Customer to provide suitably qualified and adequately trained operating staff for the operation of the Licensed System;
- (j) rectification of operator errors, or errors caused by incorrect use of the Licensed System;
- (k) rectification of errors caused by an equipment fault, or by a failure to maintain equipment adequately;
- (l) diagnosis or rectification of faults not associated with the Licensed System;
- (m) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by Pentana Solutions or the Customer;
- (n) correction of errors arising directly or indirectly out of the Customer's failure to comply with this Agreement or any other agreement with Pentana Solutions; or
- (o) correction of errors or defects which are the subject of a warranty under another agreement;

but each of these services may be provided by Pentana Solutions subject to an Extra Charge.

14.2 If so specified in this Agreement, the Services must include the provision of any updates and new releases of the Licensed System.

## **15. Updates and New Releases**

- 15.1 If so specified in the SLA, the Services include the provision of updates and new releases of the Licensed System.
- 15.2 Unless stated in the SLA to the contrary, updates and new releases of the Licensed System must be provided by Pentana Solutions as they become available and the Customer must accept them. If the Customer does not upgrade, Pentana Solutions may request an Extra Charge for its Services.
- 15.3 When reasonably required to do so by the Customer, Pentana Solutions must demonstrate the extent to which an update or new release is capable of providing functions and performance specified in the SLA. Pentana Solutions may make an Extra Charge in respect of any such demonstration.
- 15.4 Where the Customer accepts an update or new release this Agreement applies in all respects to that update or new release to the extent that it is incorporated or replaces the Licensed System.
- 15.5 Customers are required to remain on the current version of the Licensed System and an Extra Charge may apply if not.

## **16. Fees, Invoices and Payments**

- 16.1 The Customer must pay the Licence Fees, SaaS Subscription Fees, Enterprise Licence Fees, Service Fees and any other Pentana Solutions invoices at the rate and in the manner specified in the SLA or Order Form. If no invoice period has been specifically agreed, invoices shall be paid within thirty (30) days from the date of invoice.
- 16.2 Irrespective of the payment terms specified in any SLA or Order Form, the Customer must pay to Pentana Solutions;

- (a) A deposit of 10% upon signing of this Agreement;
  - (b) Amounts invoiced for any hardware, 3<sup>rd</sup> party software, licences or services purchased by Pentana Solutions pursuant to this Agreement, when the said hardware, 3<sup>rd</sup> party software, licences or services arrive at Pentana Solutions;
  - (c) All amounts relating to hardware and/or software maintenance, Licence Fees and any other recurring fee, seven (7) days from receipt of invoice;
  - (d) An annual price increase applied to all recurring fees to the same extent as the increase in Pentana Solution's general cost level, provided that such adjustments are notified to the Customer in writing four weeks in advance..
- 16.3 Unless specifically excluded in an attached Appendix or SLA or Order Form, Travel Expenses will be payable in addition to this Agreement;
- 16.4 Pentana Solutions reserves the right to vary the Licence Fee, SaaS Subscription Fees, Enterprise Licence Fees and any other Service Fees with 30 days written notice.
- 16.5 If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by Pentana Solutions, the Customer must still pay the entire invoice when due, but the amount disputed will be treated as a dispute and escalated in accordance with the Escalation Request provisions set out in the SLA, Order Form or the dispute resolution provisions in clause 31.
- 16.6 Notwithstanding the aforesaid, and without prejudice to the payment due, the Customer shall be entitled to withhold payment in the event that Pentana Solutions delivers a Product or Service which the Customer can prove deviates substantially and materially from what may be expected from a product or service with similar functionalities and technicality as the Product or Service in question, as evident to Pentana Solutions, provided that the Customer immediately upon detection of the deviation gives Pentana Solutions notice of such deviation in writing specifying Pentana Solution's deviation. The payment withheld shall be proportionate to the deviation.
- 16.7 The Customer must pay Pentana Solutions interest on any amount due and not paid by the Customer within the timeframe required by this Agreement at the interest rate specified by the Secretary of State pursuant to section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) as at the date of the relevant notice plus 5%.
- 16.8 In the event that an amount remains outstanding beyond 45 days, after reasonable notice, Pentana Solutions may at its discretion remove access via any means at its disposal (including activating Software Expiry) to any Pentana Solutions product or service, whether part of this Agreement or not including suspending its performance of services and its delivery of products.
- 16.9 In the event that the supply, installation or performance of the Licensed System is delayed and:
- (a) Pentana Solutions is required to deliver and install the Licensed System or perform services in circumstances other than those expressly or reasonably anticipated to be associated with the delivery or installation or supply of services of a similar nature; or
  - (b) There is a change in the timing or complexity of the delivery, installation of the Licensed System or the supply of Services;
- For reasons other than a breach of this Agreement by Pentana Solutions, then Pentana Solutions is entitled to immediate payment for hardware purchases and any third party costs and an Extra Charge on a time and materials basis in respect of additional resources reasonably utilised in order for Pentana Solutions to fulfil its obligations under this Agreement.
- 16.10 The Licence Fees, SaaS Subscription Fees, Enterprise Licence Fees and Service Fees are exclusive of taxes, duties and charges imposed or levied in the UK or overseas (including withholding tax) in connection with the supply, installation and support of the Licensed System. Without limiting the foregoing, the Customer is liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of the goods and services which are the subject of this Agreement but excluding taxes based solely on Pentana Solution's net income.
- 16.11 Words defined in the relevant VAT laws have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.
- 16.12 In addition to paying the Licence Fee and Service Fees and any other amount payable under or in connection with this Agreement (which is exclusive of VAT), the Customer must:
- (a) pay to Pentana Solutions an amount equal to any VAT payable for any supply by Pentana Solutions in respect of which the Licence Fee, SaaS Subscription Fees, Enterprise Licence Fees and Service Fees or other amount is payable under this Agreement; and
  - (b) make such payment either on the date when the Licence Fee and Service Fees or other amounts to which it relates is due or within seven (7) days after the Customer is issued with a tax invoice, whichever is the later.

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**17. Warranty**

- 17.1 Pentana Solutions shall not be liable for failure of the Licensed System due to causes or conditions beyond Pentana Solutions' reasonable control;
- 17.2 For the duration of the Warranty Period, Pentana Solutions warrants that the Licensed System will operate in conformity with the Documentation in all material respects, but the Customer acknowledges that the Licensed System is of such complexity that it may have inherent defects.
- 17.3 If at any time during the Warranty Period the Customer believes there is a defect in the Licensed System such that the Licensed System does not comply with or cannot be used in conformity with the Documentation in all material respects, the Customer must notify Pentana Solutions of such perceived defect.
- 17.4 Pentana Solutions will investigate the perceived defect notified pursuant to subclause 17.3 and will, upon the verification of the existence of the defect, rectify such defect without additional charge to the Customer.
- 17.5 If due investigation by Pentana Solutions of a defect reported pursuant to subclause 17.3 reveals that no such defect in fact exists, Pentana Solutions may make an Extra Charge in respect of such investigation.
- 17.6 Pentana Solutions will not be liable under this clause to the extent that a defect is caused by the Customer or a third party, including the failure of the Customer or a third party to maintain the operating environment or any part thereof, designated in the Documentation, the failure of a Customer or a third party to maintain the hardware or network, or to otherwise use the Licensed System in accordance with recommendations made by Pentana Solutions from time to time, whether in the Documentation or otherwise.
- 17.7 When any hardware or network product is no longer supported, or serviced by its supplier and has effectively reached its end of life, the cost of replacement is the responsibility of the Customer. The Customer and Pentana Solutions may jointly agree to either:
- (a) the purchase of a replacement from Pentana Solutions by the Customer; or
  - (b) continued support by Pentana Solutions at an agreed Extra Charge.
- 17.8 Pentana Solutions' warranty applies only to the functioning of the Licensed System and is entirely independent of, and Pentana Solutions is not responsible for, any warranty provided by a third party supplier of hardware or networks that allow the Customer to use the Licensed System.

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**18. Confidentiality**

- 18.1 A Party must not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 18.2 A Party will not be in breach of subclause 18.1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- 18.3 Each Party must take all reasonable steps to ensure that its employees, agents, consultants, board members, related body corporate and any sub-contractors engaged for the purposes of this Agreement and who are in direct need of access to such information in order to carry out obligations under the Agreement, do not make public or disclose the other Party's Confidential Information.
- 18.4 Notwithstanding any other provision of this clause, Pentana Solutions may disclose the terms of this Agreement to its related companies, solicitors, auditors, insurers and accountants.
- 18.5 This clause does not apply to Confidential Information that:
- (a) has been independently developed by the other Party;
  - (b) has been rightfully obtained by the other Party without restriction upon the Third Party;
  - (c) is publicly available other than through the fault or negligence of the other Party, has been released without restriction to anyone, or must be disclosed pursuant to applicable law, or by order of a court or other authority, provided that the disclosing Party gives prompt notice to the other party of such obligation of disclosure.
- Notwithstanding any other provision of this clause, the Parties are entitled to make public the business relationship of the Parties.
- 18.6 This clause survives the termination of this Agreement.



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## 19. Intellectual Property Rights

- 19.1 All proprietary rights to and interests in the Result and other deliveries made by Pentana or its sub-contractors in performing the Services, including – but not limited to – all rights to copyright, patents and other intellectual property rights thereto, shall be the property of Pentana Solutions. However, the Customer is granted the right to use the Result for use in its own business once full payment has been received for the Services in question.
- 19.2 All proprietary rights to and interest in the Pentana Products, including – but not limited to – all rights to copyright, patents and other intellectual property rights thereto, are the property of Pentana Solutions. If applicable under the Licence Agreement, the Customer is granted the right by Pentana Solutions, as the sub-licensor of Pentana Products, to use such Pentana Products in its own business in accordance with the terms of the Licence Agreement.
- 19.3 All proprietary rights to and interest in the Pentana Products, including – but not limited to – all rights to copyright, patents and other intellectual property rights thereto, are the property of the Pentana Affiliate supplying the Pentana Product. If applicable under the Licence Agreement, the Customer is granted the right by Pentana Solutions to use such Products in its own business in accordance with the terms of the Licence Agreement.
- 19.4 For any Third Party Product and related documentation which is used in connection with the Base Products or Services, the Third Party shall remain the sole owner of all rights to the Third Party Product.
- 19.5 All rights and title to and interest in any intellectual property rights to data or materials, including – but not limited to documents, drawings, computerised information, films, tapes, specifications, designs, models and equipment directly furnished to Pentana Solutions by the Customer are and shall remain the property of the Customer or the Customer's licensors. The Customer grants Pentana Solutions the right to use such materials for the fulfilment of any applicable Agreement.
- 19.6 Subject to subclauses 19.7, 19.8, 19.9, and 21 Pentana Solutions indemnifies the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's use of the Licensed System, Base Product or Result constitutes an infringement in the United Kingdom of any Intellectual Property Rights in the Licensed System, Base Product or Result.
- 19.7 Pentana Solutions is not required to indemnify the Customer as provided in subclause 19.7 unless the Customer:
- (a) notifies Pentana Solutions in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
  - (b) gives Pentana Solutions the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
  - (c) provides Pentana Solutions with reasonable assistance in conducting the defence of such a claim;
  - (d) permits Pentana Solutions to modify, alter or substitute the infringing part of the Licensed System, Base Product or Result at its own expense in order to avoid continuing infringement, or authorises Pentana Solutions to procure for the Customer the authority to continue the use and possession of the infringing Licensed System Base Product or Result.
- 19.8 Pentana Solutions does not indemnify the Customer to the extent that an infringement, suspected infringement or alleged infringement arises from:
- (a) use of the Licensed System, Base Product or Result in combination by any means and in any form with other goods or equipment not specifically approved by Pentana Solutions;
  - (b) use of the Licensed System, Base Product or Result in a manner or for a purpose not reasonably contemplated or not authorised by Pentana Solutions or otherwise in a way that deviates from the permitted use according to the applicable Agreement or the instructions of Pentana Solutions regarding the use of the Licensed System, Base Product or Result;
  - (c) modification or alteration of the Licensed System, Base Product or Result without the prior written consent of Pentana Solutions; or
  - (d) any transaction entered into by the Customer relating to the Licensed System, Base Product or Result without Pentana Solutions' prior consent in writing.
- 19.9 In the event that proceedings are brought or threatened by a third party against the Customer alleging that the Customer's use of the Licensed System, Base Product or Result constitutes an infringement of Intellectual Property Rights, Pentana Solutions may at its option and at its own expense conduct the defence of such proceedings. The Customer must provide all necessary co-operation, information and assistance to Pentana Solutions in the conduct of the defence of such proceedings.

- 19.10 Should the Licensed System, Base Product or Result furnished to the Customer under an Agreement become, or in Pentana Solution's opinion be likely to become, the subject of a claim for infringement, Pentana Solutions may, at its sole discretion and expense:
- (a) Procure for the Customer the right to continue using the Licensed System, Base Product or Results;
  - (b) Modify the Licensed System, Base Product or Result so that it is no longer infringing or;
  - (c) Replace the Licensed System, Base product or Result by other software of equal or superior functional capability.

If none of the foregoing is, in Pentana Solutions' opinion, commercially reasonable, Pentana may terminate any and all licenses and sublicenses to such Licensed System, Base Product or Result whereby all license fees paid for such Licensed System, Base Product or Result shall be refunded, however, with a reasonable deduction there from corresponding to the benefits enjoyed by the Customer for the period during which the Licensed System, Base Product or Result is used.

- 19.11 The Customer must indemnify Pentana Solutions against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:
- (a) the claim arises from an event specified in subclause 19.9; or
  - (b) the ability of Pentana Solutions to defend the claim has been prejudiced by the failure of the Customer to comply with any requirements of subclauses 19.7 or 19.9.
- 19.12 The Customer has a limited licence only to use Pentana Solutions' Trade Marks in the manner that Pentana Solutions has approved on the signing of this licence, or in a manner subsequently approved by Pentana Solutions in writing and there is no transfer of ownership or general right of use of the Pentana Solutions Trade Marks as a result of this licence.

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## 20. Implied Terms

- 20.1 Subject to subclause 20.2, any condition or warranty which would otherwise be implied in this Agreement (whether by statute, common law, custom or course dealing) is hereby excluded.
- 20.2 Where, notwithstanding the exclusions set out in clause 20.1 above, legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty is deemed to be included in this Agreement. However, the liability of Pentana Solutions for any breach of such condition or warranty is limited, at the option of Pentana Solutions, to one or more of the following:
- (a) if the breach relates to goods:
    - (1) the replacement of the goods or the supply of equivalent goods;
    - (2) the repair of such goods;
    - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (4) the payment of the cost of having the goods repaired; and
  - (b) if the breach relates to services:
    - (1) the supplying of the services again; or
    - (2) the payment of the cost of having the services supplied again.

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## 21. Liability of Pentana Solutions

- 21.1 Except in relation to liability for personal injury (including sickness and death), caused by Pentana Solutions' negligence and liability for fraud. Pentana Solutions is under no liability to the Customer in respect of any indirect, special, incidental loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the Licensed System, Base Product, Service or Result furnished under or related to the Agreement, including, without limitation, damages for loss of profits, goodwill, work stoppage, computer failure or malfunction, loss or alteration of data or any and all other commercial damages or losses, supplied pursuant to this Agreement or in respect of a failure or omission on the part of Pentana Solutions to comply with its obligations under this Agreement even if Pentana Solutions is advised of the possibility thereof.

- 21.2 Subject to subclause 21.3, Pentana Solutions' entire liability under any individual agreement shall not exceed the contractual value of each individual agreement under which the damages directly occurred
- 21.3 In order not to forfeit their rights the Parties shall present claims for damages within twelve months from the time when the damage was discovered or should have been discovered.
- 21.4 Subject to subclause 21.5, the Customer warrants that it has not relied on any representation made by Pentana Solutions which has not been, stated expressly in this Agreement, or upon any descriptions, representations, illustrations or specifications contained in any document including catalogues or publicity material produced by Pentana Solutions.
- 21.5 The Customer acknowledges that to the extent Pentana Solutions has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 21.6 The Customer at all times indemnifies and holds harmless Pentana Solutions and its officers, employees and agents (those indemnified) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
- (a) a breach by the Customer of its obligations under this Agreement;
  - (b) any wilful, unlawful or negligent act or omission of the Customer.
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## **22. Termination**

- 22.1 Without limiting the generality of any other clause in this Agreement, Pentana Solutions may terminate this Agreement immediately by notice in writing if:
- (a) the Customer is in breach of any term of this Agreement and has not remedied the breach within thirty (30) days following written notice to do so;
  - (b) the Customer for any reason destroys or disposes of or loses custody of the Licensed System, Base Product or Result;
  - (c) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency procedure;
  - (d) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
  - (e) the Customer, being a natural person, dies; or
  - (f) the Customer cease or threaten to cease conducting its business in the normal manner,
- 22.2 If notice is given to the Customer pursuant to subclause 22.1, Pentana Solutions may, in addition to terminating the Agreement:
- (a) Enter the Site and/or premises of the Customer and repossess any copies of the Licensed System, Base Product or Result in the possession, custody or control of the Customer;
  - (b) retain any moneys paid;
  - (c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
  - (d) be regarded as discharged from any further obligations under this Agreement; and
  - (e) pursue any additional or alternative remedies provided by law.
- 22.3 Without limiting the generality of any other clause in this Agreement, a customer can terminate this Agreement immediately by notice in writing if:
- (a) Pentana Solutions is in breach of any terms of this Agreement and has not remedied the breach within thirty (30) days following written notice to do so;
  - (b) Pentana Solutions becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency procedure;
  - (c) Pentana ceases or threatens to cease conducting its business in the normal manner.
- 22.4 A Customer can terminate this Agreement by giving Pentana Solutions 30 days notice in writing after a period of six (6) months from the date of commencement of this Agreement has passed.

- 22.5 If a customer terminates this Agreement pursuant to clause 22.4, the customer is responsible for the payment of all fees forming part of this Agreement for the full term of this Agreement including all 3<sup>rd</sup> party costs, and other fixed term contracts, incurred by Pentana Solutions as part of this Agreement.
- 22.6 Pentana Solutions shall provide Customer Data in its standard database export format, excluding the Pentana Solutions Core Technology, to the Customer upon the Customer's written request at an additional cost to the Customer. After forty-five (45) days following the expiration or termination of this Agreement for the Subscription Service (including any Transition Subscription Service term, if applicable), if the Customer has not requested the return of its Customer Data, Pentana Solutions shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete the Customer's instances of the Subscription Service.
- 22.7 All provisions concerning payment, confidentiality, non-solicitation, limitation of liability, intellectual property, waiver, assignment and severability shall remain in effect despite the termination of any Agreement(s) hereunder.
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### **23. VAT and Claims**

- 23.1 If a payment to satisfy a claim or a right to claim under or in connection with this Agreement (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for an indemnity or for reimbursement of any expense) gives rise to a liability to pay VAT, the payer must also pay, and indemnify the payee against, the amount of that VAT.
- 23.2 If a Party has a claim under, or in connection with this Agreement for a cost on which that Party must pay VAT, the claim is for the cost plus all VAT (except any VAT for which that Party is entitled to an input tax credit).
- 23.3 If a Party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for VAT (whether that amount is separate or included as part of a larger amount).
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### **24. Force Majeure**

- 24.1 Neither Party is liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.
- 24.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.
- 24.3 In the event of Force Majeure, each Party shall promptly notify and furnish the other Party in writing with all relevant information thereto.
- 24.4 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.
- 24.5 If this Agreement is terminated pursuant to subclause 24.4, Pentana Solutions refunds moneys previously paid by the Customer pursuant to this Agreement for goods or services not provided by Pentana Solutions to the Customer.
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### **25. Sub-Contracts**

- 25.1 Pentana Solutions may sub-contract for the performance of this Agreement or any part of this Agreement to the extent specified in the SLA or upon obtaining (subject to subclause 26.3) the Customer's prior written consent.
- 25.2 The Customer must not unreasonably withhold consent for the engagement of a sub-contractor in accordance with subclause 25.1.
- 25.3 Pentana Solutions may, without the consent of the Customer, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of Services pursuant to this Agreement.
- 25.4 Pentana Solutions will be liable for the work performed by any individuals engaged on a sub-contract or consultancy basis to the same extent as Pentana Solutions would be liable for its own work. Pentana Solutions shall ensure that any individuals engaged on a sub-contract or consultancy basis comply with the confidentiality provisions set forth in clause 18 of this Agreement.
- 25.5 In no event shall Pentana be deemed an employee, agent, joint venture or partner of the Customer. Nothing in any Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee by and between Pentana and the Customer or as creating an exclusive arrangement between them.
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**26. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties concerning this subject matter and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

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**27. Precedence**

27.1 The documents comprising this Agreement are to be read in the following order of precedence:

- (a) the clauses of this Agreement;
- (b) any SLA

27.2 Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

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**28. Assignment and Novation**

28.1 The benefit of this Agreement must not be assigned by the Customer without Pentana Solutions' written consent.

28.2 Pentana Solutions may consent to the assignment or novation of this Agreement by the Customer subject to such conditions as it chooses to impose.

28.3 Pentana Solutions may, without the consent of the Customer, assign the Agreement:

- (a) to another Pentana Affiliate;
- (b) to a purchaser of all or substantially all of Pentana Solutions' assets;
- (c) to a purchaser of a Pentana Affiliate's assets, or;
- (d) to a purchaser of individual Pentana Solutions Products.

28.4 Pentana Solutions may further assign the right to receive payments under an Agreement to another party.

28.5 The Customer may, with the consent of Pentana Solutions assign the Agreement to another Affiliate.

28.6 In the event of an assignment by the Parties, the rights and obligations of the Agreement bind and benefit any successors and assigns of the Parties.

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**29. Waiver**

29.1 No right under this Agreement is deemed to be waived except by notice in writing signed by each Party.

29.2 A waiver made by Pentana Solutions pursuant to subclause 29.1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Customer.

29.3 A waiver of one provision of the Agreement shall not be deemed a waiver of any other provision therein, nor shall the waiver be construed as a continuing waiver of the Agreement.

29.4 Subject to subclause 29.1, any failure by Pentana Solutions to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by Pentana Solutions to the Customer, will not be construed as a waiver of Pentana Solutions' rights under this Agreement.

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**30. Variation**

30.1 The provisions of this Agreement must not be varied, except by agreement in writing signed by the Parties.

30.2 If either Party wishes to vary the Agreement, the proposing Party must submit a copy of the proposed variations to the other Party (the receiving Party), specifying a reasonable period in which the receiving Party is to provide written notice of acceptance or rejection of the proposal.

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- 30.3 If the receiving Party accepts the variations, the Agreement between those parties is deemed to be amended from the date of acceptance.
- 30.4 If the receiving Party rejects the proposed variations, each Party must perform the Agreement in accordance with the unvaried terms.
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## **31. Disputes**

- 31.1 The Parties acknowledge that before a dispute arises in connection with this Agreement, the Parties will have first tried to resolve the matter as between the respective company representatives and failing that a disputant may give the other disputant a notice specifying the dispute.
- 31.2 Within fifteen (15) Business Days after the notice is given, the disputants (each represented by its Chief Executive Officer or other person authorised by the disputant to bind it in connection with the dispute) must confer to resolve the dispute or to decide the method of resolving the dispute.
- 31.3 Unless the disputants otherwise agree, the dispute must be referred to mediation if not resolved within thirty (30) Business Days after the notice is given.
- 31.4 The disputants must appoint a mediator within forty-five (45) Business Days after the notice is given. If they fail to agree, the mediator must be nominated by the then current President of the Law Society or nominee. The mediation must be conducted in London, England in accordance with the mediation rules of the Centre for Effective Dispute Resolution.
- 31.5 The mediator assists in negotiating a resolution of the dispute. The mediator may not make a decision binding on the disputants, unless the disputants have agreed to it in writing.
- 31.6 The mediation ends if the dispute is not resolved within thirty (30) Business Days after the mediator's appointment.
- 31.7 Each disputant must keep confidential:
- (a) any information or documents disclosed in the course of the mediation;
  - (b) any discussions between the disputants in the course of the mediation.
- These may be used only to resolve the dispute.
- 31.8 Unless disclosure is required by law:
- (a) each disputant must keep confidential all information about the existence, conduct, status or outcomes of the mediation and the terms of any mediation settlement agreement;
  - (b) this information and these terms may be published or announced only with the consent of the disputants and in terms agreed by them in writing.
- 31.9 The dispute resolution process does not affect any party's obligations under this Agreement.
- 31.10 Neither disputant may commence Court proceedings in respect of the dispute until the mediation period ends. This does not affect a disputant's right to seek injunctive or urgent declaratory relief.
- 31.11 Each disputant must pay its own costs in respect of the dispute resolution process. The disputants must pay the mediator's costs in equal shares and the cost of third party reports and enquiries requested by the mediator.
- 31.12 Regardless of the form of action, whether based upon breach of contract, tort or otherwise, an Agreement and all causes of action arising out of an Agreement or the relationship of the Parties shall be governed by and construed under the laws of England in the City of London. All disputes arising out of an Agreement shall be finally settled by the relevant Court in the City of London. The proceedings shall take place in the City of London. The language to be used in the arbitral proceedings, the documentation and the award shall be in the English language unless otherwise agreed between the Parties.
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## **32. Survival of Agreement**

- 32.1 Subject to any provision to the contrary, the benefit and the obligations of this Agreement shall be only for the Parties and their successors, trustees, permitted assigns or receivers, but shall not enure to the benefit of any other persons.
- 32.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.
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**33. Severability**

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.

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**34. Governing Law**

34.1 This Agreement will be governed by the laws of England.

34.2 The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and the Courts of appeal from them.

34.3 No party may object to the jurisdiction of any of those Courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

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**35. Notices**

35.1 Notices under this Agreement may be delivered by hand, by mail or by facsimile to the addresses specified in the Registered Office at the front of this Agreement and must be in writing.

35.2 Notices are deemed to be given:

- (a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
  - (b) in the case of posting, three (3) days after despatch;
  - (c) in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission;
  - (d) In the case of email, upon receipt by the sender of an automatic confirmation that the e-mail has been received;
  - (e) In the case of courier, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party.
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**36. Risk and Title**

36.1 Risk in goods shall pass to the Customer upon delivery..

36.2 Title to goods shall not pass to the Customer until Pentana Solutions has received payment in full (in cash or cleared funds) for:

- (a) such goods; and
- (b) all other sums which are or which become due to Pentana Solutions from the Customer for sales of goods or on any account.

36.3 Until title to goods has passed to the Customer, the Customer shall:

- (a) hold such goods on a fiduciary basis as Pentana Solutions' bailee;
  - (b) store such goods separately from all other goods held by the Customer so that they remain readily identifiable as Pentana Solutions' property;
  - (c) not remove, deface or obscure any identifying mark or packaging on or relating to such goods; and
  - (d) maintain such goods in satisfactory condition and keep them insured on Pentana Solutions' behalf for their full price against all risks with an insurer that is reasonably acceptable to Pentana Solutions. On request the Customer shall allow Pentana Solutions to inspect such goods and the insurance policy,
  - (e) but the Customer may use such goods in the ordinary course of its business.
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36.4 If before title to goods passes to the Customer the Customer becomes subject to any of the events in subclauses **Error! Reference source not found.** to **Error! Reference source not found.** inclusive then, without limiting any other right or remedy Pentana Solutions may have, Pentana Solutions may at any time require the Customer to deliver up such goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant goods are stored in order to recover them.

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### **37. Privacy**

- 37.1 The Customer acknowledges that granting Pentana Solutions access pursuant to clauses 3 and 14 of this Agreement, may involve disclosure to Pentana Solutions of Personal Data of the Customer's directors, employees, suppliers and customers.
- 37.2 The Customer agrees that the Customer has read and understood the Privacy Policy and consents to and authorises the collection, use and disclosure of the Customer's Personal Data, the Personal Data of the Customer's directors, employees, suppliers and customers in accordance with the Privacy Policy, this Agreement and the SLA.
- 37.3 The Customer warrants and represents to Pentana Solutions that, if required by law, it complies with the Privacy Act.
- 37.4 Irrespective of whether the Customer is required by law to comply with the Privacy Act, the Customer agrees to take reasonable steps to ensure that each of the Customer's directors, employees, suppliers and customers is aware that their Personal Data will be disclosed to Pentana Solutions and that the Customer may require Pentana Solutions to disclose their Personal Data to other third parties, and agree such reasonable steps includes the provision of a compliant Privacy Notice to each such individual at the time Personal Data is collected by the Customer or as soon as reasonably practicable thereafter.
- 37.5 The Customer warrants and agrees that it will not disclose Personal Data of its directors, employees, suppliers and customers to Pentana Solutions if it has not taken the reasonable steps specified above.
- 37.6 The Customer shall provide full details in writing to Pentana Solutions' Privacy Officer of any and all requests for amendment to Personal Data held by Pentana Solutions, all complaints about alleged breaches of the Privacy Act involving Pentana Solutions, and all opt-out notifications, immediately upon becoming aware of them.
- 37.7 Without limiting the effect of clause 21.6 the Customer agrees to indemnify Pentana Solutions for any loss or damage, including legal costs, it suffers or incurs as a result of a breach of the Privacy Act or this clause 37 by the Customer.
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### **38. Non-solicitation**

The Parties agree not to actively solicit for employment or in any other way directly or indirectly hire any of the other Party's employees during the term of any Agreement and for a period of six months thereafter. In the event that either Party is in breach of this obligation, such Party shall be liable to pay the other Party a penalty equivalent to the yearly salary of the solicited employee.

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### **39. Execution**

This Agreement may be executed in counterparts by the respective Parties, each of which when so executed is deemed to be an original and all of which taken together constitute one and the same agreement, provided that this Agreement is of no force and effect until the counterparts are exchanged.

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### **40. Renewal**

This Agreement (subject to the provisions of clause 22) will automatically be renewed for a three (3) year period at the end of the defined initial term, unless either party gives to the other party written notice of intention to terminate the Agreement ninety days (90) prior to its termination date.

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Executed as an agreement on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ (AGREEMENT DATE – PLEASE FILL IN)

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Executed by Pentana Solutions

**PENTANA SOLUTIONS - SIGN HERE**

.....  
Pentana Solutions Company Secretary - Signature

.....  
Pentana Solutions Company Secretary - Name (please print)

.....  
Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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Executed by Pentana Solutions

**PENTANA SOLUTIONS ACCOUNT MANAGER - SIGN HERE**

.....  
Pentana Solutions Account Manager - Signature

.....  
Pentana Solutions Account Manager - Name (please print)

.....  
Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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Executed by the Customer

**CUSTOMER - SIGN HERE**

.....  
Customer's Director/Company Secretary – Signature

.....  
Customer's Director/Company Secretary - Name (please print)

.....  
Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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